

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:MAN:3:POSTF-160860-01
EPFlores

date: *December 20, 2001 EPA*

to: Henry Singleton, Territory Manager
Large and Mid-Size Business Division (Financial Services)
Attention: [REDACTED], Team Manager

from: Area Counsel, LMSB (Financial Services)

subject: [REDACTED]

Claim For Refund-Fiscal Year Ended March 31, [REDACTED]
UIL NOS. 6511-03.11, 6511-03.02

This memorandum is our response to your request for advice as to whether the Service's Philadelphia, Pennsylvania office properly disallowed, under I.R.C. section¹ 6511, [REDACTED]'s claim for refund for the fiscal year ended March 31, [REDACTED]. This memorandum should not be cited as precedent.

Our advice is based on the facts provided by you and that are set forth in this memorandum. The advice in this memorandum is conditioned on the accuracy of the facts you presented to us. If you determine that these facts are incorrect, you should not rely on this advice.

This advice is subject to National Office review. That review might result in modifications to the conclusions contained herein. We will contact you to discuss the National Office's comments, if any, as soon as we hear from that office, which should be in approximately 10 days. In the meantime, you should consider the conclusions contained in this memorandum as preliminary.

ISSUE:

Did [REDACTED] timely file its claim for refund for the fiscal year ended March 31, [REDACTED]?

¹ All further references to "§" or "section" will be to the Internal Revenue Code in effect during the years in question.

FACTS:

_____ ("_____") timely filed its Form 1120F for the fiscal year ended March 31, _____ ("fiscal year _____") on _____, having received extensions to file this return by _____. _____ paid \$_____ of taxes for the fiscal year _____ as shown below:

<u>Amount Paid</u>	<u>Date Paid</u>	<u>Explanation</u>
\$ _____	_____	Overpayment from prior year
_____	_____	Estimated tax
_____	_____	Tax paid with extension to file corporate income tax return
_____	_____	Withholding at source
\$ _____		

On _____², _____ filed an amended return for the fiscal year _____ claiming a refund of \$_____ due to capital loss carrybacks and additional bad debt deductions with corollary adjustments. The Service sent a letter to _____ on _____ stating that it was disallowing only the bad debt portion of the refund claim because under section 6511 the statute of limitations had expired³. Also, the Service did not issue a partial refund to _____ and instead instructed _____ to recompute its claim amount considering only the capital loss carrybacks. _____ did not file a revised amended return for the fiscal year _____.

DISCUSSION:

Generally, under section 6511(a), a taxpayer may file a claim for refund within three years after the return was filed or two years after the tax was paid, whichever is later. Several

² _____ sent its amended return by certified mail bearing the postmark date of _____, the filing date under section 7502. The Service received _____'s amended return on _____.

³ Although the Service rejected only the bad debt portion of the refund claim, we have also looked at whether _____ timely filed, under section 6511, the capital loss carryback portion of the refund claim.

provisions in section 6511 create special limitation periods in the case of refund claims attributable to a bad debt deduction and capital loss carryback.

1. Bad Debt Deduction

Under section 6511(d)(1), a taxpayer has seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made if such claim related to an overpayment of tax imposed by subtitle A ("Income Taxes" section of the Internal Revenue Code) on account of

1) the deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or under section 165(g), of a loss from worthlessness of a security, or

2) the effect that the deductibility of a debt or loss described in 1) above has on the application to the taxpayer of a carryover.

If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be the later of seven years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in section 6511(d)(2).

In order to receive the benefit of the seven year period of section 6511(d)(1), [REDACTED] was required to file its amended return by [REDACTED], seven years after it was required to file its return for the fiscal year [REDACTED] (determined without regard to extensions of time for filing such return⁴). [REDACTED]'s amended return, filed on [REDACTED], meets this requirement. In addition, the Court of Appeals for the Seventh Circuit stated in Indiana National Corporation et al v. United States, 980 F.2d 1098, 1101 (7th Cir. 1992), cert. denied, 508 U.S. 907 (1993), that section 6511(d)(1) applies to "taxpayers who discover new or increased bad debt deductions..." Section 6511(d)(1) does apply here because [REDACTED] is claiming, under section 166, additional bad debt deductions of \$[REDACTED] for the fiscal year [REDACTED].

⁴ Treas. Reg. § 305.6511(d)-1(a)(1)(ii)

⁵ [REDACTED] was required to file (without extensions) its return for the fiscal year [REDACTED] on or before June 15, [REDACTED]. Section 6072(b).

Under Treas. Reg. § 301.6511(d)-(1)(c), the seven year period would only apply to an overpayment resulting from the deductibility of a debt which became entirely worthless during the subject taxable year, i.e., during the fiscal year [REDACTED]. [REDACTED] stated, in its reconciliation statement attached to the amended return, that it was claiming additional bad debt deductions for [REDACTED] loans that became wholly worthless during the fiscal year [REDACTED], for which it had not previously claimed deductions. [REDACTED] also charged off these loans during the fiscal year [REDACTED]. Therefore, [REDACTED] timely filed, under section 6511(d)(1), its claim for refund as to these bad debt deductions.

2. Capital Loss Carryback

As to the portion of [REDACTED]'s claim for refund attributable to capital loss carrybacks, under section 6511(d)(2), in lieu of the general three year period of limitation in section 6511(a), [REDACTED] was required to file its claim by the end of the later of the following two periods of limitation: 1) three years after the time prescribed by law for filing its return (including extensions) for the taxable year of the net capital loss which results in such carryback or 2) if [REDACTED] agreed, under section 6501(c)(4), to extend the statute of limitations for the taxable year of the net operating capital loss, six months after the expiration of the period within which an assessment may be made pursuant to this section 6501(c)(4) agreement.

The relevant taxable years which result in capital loss carrybacks are the fiscal years ended March 31, [REDACTED] ("fiscal year [REDACTED]") and March 31, [REDACTED] ("fiscal year [REDACTED]"). Because [REDACTED] did not extend the statute of limitations for these fiscal years, the applicable filing period under section 6511(d)(2) is three years after the time prescribed by law for filing returns (including extensions) for these fiscal years which created the capital loss carrybacks. Since these returns were due to be filed (with extensions) on [REDACTED] (for fiscal year [REDACTED]) and [REDACTED] (for fiscal year [REDACTED]), [REDACTED] was required to file its refund claim for the capital loss carrybacks by [REDACTED] (for fiscal year [REDACTED]) and [REDACTED] (for fiscal year [REDACTED]). [REDACTED]'s refund claim, filed on [REDACTED], is therefore timely with respect to the capital loss carrybacks.

CONCLUSION:

Under sections 6511(d)(1) and 6511(d)(2), [REDACTED] timely filed on [REDACTED] its refund claim for fiscal year [REDACTED] attributable to bad debt deductions and capital loss carrybacks from the fiscal years [REDACTED] and [REDACTED]. If you have any questions, please call Lisa Flores at (212)436-1142. From December 21, 2001 through January 11, 2002, please contact Murali Balachandran at (212)436-1412.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel, LMSB
(Financial Services)

By: _____
PETER J. LABELLE
Associate Area Counsel